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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BERNICE RAULLERSON,

Plaintiff,

vs.

CITY OF EL CAJON, GREG JOHNSON,
JOHN BENNETT and DOES I Through XX,
Inclusive,

Defendants.

CASE NO. 07 CV 2001W (AJB)
**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Negligence
2. Assault and Battery
3. False Arrest
4. Civil Rights Action

JURY TRIAL DEMANDED

Plaintiff alleges:

GENERAL ALLEGATIONS

1. Plaintiff, BERNICE RAULLERSON, is and was at all material times mentioned herein a resident of the CITY OF SAN DIEGO, State of California.

2. At all times mentioned herein, Defendants GREG JOHNSON, JOHN BENNETT and DOES I through XX were employees of Defendants CITY OF EL CAJON and in doing the acts hereinafter described acted within the course and scope of their employment. The acts of all Defendants, and each of them, were also done under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of California. Defendants GREG

1 JOHNSON, JOHN BENNETT and DOES I through XX, are sued individually and in their
2 capacities as police officers for the CITY OF EL CAJON.

3 3. Defendant, CITY OF EL CAJON, is a political sub-division of the State of
4 California, and is the employer of Defendants GREG JOHNSON, JOHN BENNETT and DOES
5 I through XX. The individual Defendants and each of them performed all herein alleged acts for,
6 and in the name of, Defendant CITY OF EL CAJON.

7
8 4. The true names or capacities whether individual, corporate, associate or
9 otherwise, of Defendants named herein as DOES I through XX are unknown to Plaintiff, who
10 therefore sues said Defendants by such fictitious names. Plaintiff will amend this complaint to
11 show said Defendants' true names and capacities when the same have been ascertained. Plaintiff
12 is informed and believes and thereon alleges, that each of the fictitiously named Defendants is
13 responsible in some manner for the occurrences herein alleged, and Plaintiff's injuries as herein
14 alleged were proximately caused by said Defendants.

15
16 5. Prior to the filing of this Complaint, Plaintiff filed a claim against Defendant
17 CITY OF EL CAJON for the injuries alleged herein. Within the past six months, Defendant has
18 denied the claim.

19
20 6. Jurisdiction is invoked pursuant to 28 U.S.C. §§1331(a)(3), and 42 U.S.C. §1983.
21 Venue is invoked under 28 U.S.C. §1391.

22
23 7. Supplemental jurisdiction over Plaintiff's state law claims is invoked pursuant to
24 28 U.S.C. §1367.

25 **FIRST CAUSE OF ACTION**

26 *[Negligence-Against City of El Cajon, Greg Johnson and John Bennett]*

27 8. Plaintiff realleges and incorporates by reference each and every allegation
28

1 contained in paragraphs One through Seven of the General Allegations of this Complaint as
2 though fully set forth herein.

3 9. On or about October 25, 2006, El Cajon police officers, including Defendants
4 GREG JOHNSON, JOHN BENNETT and DOES I through XX, contacted Plaintiff at 5316
5 Meade Avenue, Apt. 29 in San Diego. Plaintiff is informed and believes and thereupon alleges
6 that said officers, and each of them, were acting pursuant to their authority as officers of the El
7 Cajon Police Department.
8

9 10. At said time and place, Defendants GREG JOHNSON, JOHN BENNETT and
10 DOES I through XV and each of them, unnecessarily, unlawfully, negligently and carelessly
11 used excessive force upon Plaintiff causing serious and permanent injuries to Plaintiff while
12 purportedly attempting to execute a search warrant at her address which was intended to be
13 served on the apartment next door. Plaintiff is informed and believes and thereupon alleges that
14 said officers, and each of them, were acting pursuant to their authority as officers of the El Cajon
15 Police Department.
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17

18 11. By reason of the acts alleged above, Defendants, and each of them, were
19 negligent and breached their duty of due care owed to Plaintiff.

20 12. As a direct and proximate result of the negligent and excessive actions of
21 Defendants, and each of them, Plaintiff was hurt and injured in her health, strength and activity,
22 sustaining injury to her body and shock and injury to her nervous system and person, all of said
23 injuries which has caused and has continued to cause great mental, physical and nervous pain
24 and suffering. Plaintiff is informed and believes that upon such information and belief alleges
25 that said injuries will result in permanent disability to Plaintiff all to her damage in a sum within
26 the jurisdiction of this Court in an amount to be proved at the time of trial.
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1 13. As a further direct and proximate result of the negligence and excessive acts of
2 Defendants, and each of them, Plaintiff has been required to employ physicians and surgeons to
3 examine, treat and care for her and to incur medical and incidental expenses. Plaintiff is
4 informed and believes, and thereon alleges, that she will continue to require physicians and
5 surgeons to treat, examine and care for her and she will incur future associated medical and
6 incidental expenses. The exact amount of said medical and incidental expenses is unknown at
7 this time and Plaintiff will seek leave to amend this Complaint to state the same when fully
8 ascertained, or as according to proof at trial.
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12 **SECOND CAUSE OF ACTION**

13 *[Assault and Battery-Against City of El Cajon, Greg Johnson and John Bennett]*

14 14. Plaintiff realleges and incorporates by reference each and every allegation
15 contained in paragraphs One through Seven of the General Allegations and Paragraphs Eight
16 through Thirteen of the First Cause of Action as though fully set forth herein.

17 15. On October 25, 2006, Defendants GREG JOHNSON, JOHN BENNETT and
18 DOES I through XX, and each of them, acting pursuant to their authority as police officers for
19 Defendant City of El Cajon, did unlawfully and maliciously assault and batter Plaintiff. Said
20 actions caused serious and permanent injuries to said Plaintiff as herein alleged.
21

22 16. By reason of the assault and battery alleged above, Plaintiff suffered the damages
23 alleged in Paragraphs Twelve and Thirteen, above.
24

25 18. The conduct of Defendants GREG JOHNSON, JOHN BENNETT and DOES I
26 through XX, and each of them, was taken with fraud, malice and oppression, as those terms are
27 defined in California Civil Code §§ 3294 (c)(1), (2), and (3). Accordingly, Plaintiff is entitled
28

1 to an award of exemplary damages against these Defendants only in an amount according to
2 proof at trial.

3
4 **THIRD CAUSE OF ACTION**

5 [False Arrest/Unlawful Seizure-Against City of El Cajon, Greg Johnson and John Bennett]

6 19. Plaintiff realleges and incorporates by reference each and every allegation
7 contained in paragraphs One through Seven of the General Allegations, paragraphs Eight
8 through Thirteen of the First Cause of Action, and paragraphs Fourteen through Eighteen of the
9 Second Cause of Action as though fully set forth herein.

10 20. In committing the acts alleged above, Defendants, and each of them, falsely
11 arrested and imprisoned Plaintiff in that Plaintiff was arrested without a warrant and without
12 reasonable or probable cause.

13 21. The acts alleged above also constituted an unlawful seizure in violation of the
14 Fourth Amendment to the United States Constitution entitling Plaintiff to damages pursuant to
15 Title 42 U.S.C. § 1983 *et seq.*

16 22. By reason of the false arrest and the unlawful seizure alleged above, Plaintiff
17 suffered the damages alleged in Paragraphs Twelve and Thirteen, above.

18 23. In doing the acts alleged herein, Defendants GREG JOHNSON, JOHN
19 BENNETT and DOES I through XX, acted maliciously and with a wanton disregard for the
20 rights and feelings of Plaintiff, and by reason thereof Plaintiff demands exemplary and punitive
21 damages in an amount to be proven at trial.

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24 **FOURTH CAUSE OF ACTION**

25 [Civil Rights Action-Against City of El Cajon, Greg Johnson and John Bennett]

26 24. Plaintiff realleges and incorporates by reference each and every allegation
27 contained in paragraphs One through Seven of the General Allegations, paragraphs Eight
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1 through Thirteen of the First Cause of Action, paragraphs Fourteen through Eighteen of the
2 Second Cause of Action, and paragraphs Twenty through Twenty Four of the Third Cause of
3 Action and paragraphs Twenty Five through Twenty Nine of the Fourth Cause of Action, and
4 paragraphs Thirty through Thirty One of the Fifth Cause of Action, and paragraphs Nineteen
5 through Twenty Three of the Third Cause of Action as though fully set forth herein.
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7 25. Each person enjoys a right to be left alone, and a right not to be deprived of life,
8 liberty, or property without due process of law, or denied equal protection of the laws. Said right
9 not to be deprived of life, liberty or property without due process of law is expressly included in
10 the California Constitution Article 1, § 7, and is included by implication, within the penumbras
11 of the Bill of Rights in the U.S. Constitution.
12

13 26. 42 USC § 1983, provides in pertinent part as follows:

14 Every person who, under color of any statute, ordinance, regulation,
15 custom or usage of any State or Territory or the District of Columbia, subjects, or
16 causes to be subjected, any citizen of the United States or other person within the
17 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
18 secured by the Constitution and laws, shall be liable to the party injured in an
19 action at law, suit in equity, or other proper proceeding for redress.

20 27. Defendants, CITY OF EL CAJON, GREG JOHNSON, JOHN BENNETT and
21 DOES I though XX, and each of them, acting under color or law, caused Plaintiff to be subjected
22 to the deprivation of her rights of due process, as guaranteed them by the U.S. Constitution.

23 28. Defendant CITY OF EL CAJON is a person subject to liability under 42 USC
24 Section 1983. There is a history of widespread abuse of citizens' rights within Defendant CITY
25 OF EL CAJON.

26 29. Defendant CITY OF EL CAJON has a practice and custom of negligently
27 training, retaining, disciplining, and supervising its employees, officers and other law
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1 enforcement personnel with respect to observing and protecting citizens' rights. Defendant
2 CITY OF EL CAJON has had notice of same. Defendant CITY OF EL CAJON has been grossly
3 negligent in rectifying the situation and has acted with conscious indifference to the rights of
4 citizens, such as Plaintiff. The injuries to Plaintiff, as alleged herein, would not have occurred
5 but for Defendant's malfeasance in its regulation, custom, practices and procedures concerning
6 the operation of its police department.
7

8 30. As a direct and proximate result of the above, Plaintiff has been deprived of her
9 rights of due process and has suffered severe emotional distress, in addition to serious physical
10 injuries. The full nature and extent of said damages has not as yet been ascertained. However,
11 Plaintiff is informed and believes and based thereupon alleges, that said damages is within the
12 jurisdictional limitations of this Court. Plaintiff will seek leave to amend this Complaint when
13 the full nature and extent of said damages is fully ascertained.
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15 31. The conduct of Defendants, and each of them, was taken with fraud, malice and
16 oppression, as those terms are defined in California Civil Code §§ 3294 (c) (1), (2), and (3).
17 Accordingly, Plaintiff is entitled to an award of exemplary damages in an amount according to
18 proof at trial.
19

20 WHEREFORE, Plaintiffs prays for judgment against Defendants and each of them as
21 follows:
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23 For the FIRST CAUSE OF ACTION against Defendants, and each of them:

- 24 1. For general damages according to proof;
- 25 2. Special damages, according to proof;
- 26 3. Prejudgment interest;
- 27 4. For costs of suit herein;
- 28 5. For such other and further relief as the Court may deem just proper.

1 For the SECOND CAUSE OF ACTION against Defendants, and each of them:

- 2 1. For general damages according to proof;
- 3 2. Special damages, according to proof;
- 4 3. Punitive damages, according to proof, as to the individual Defendants
- 5 only;
- 6 4. Prejudgment interest;
- 7 5. For costs of suit herein;
- 8 6. For such other and further relief as the Court may deem just proper.

9 For the THIRD CAUSE OF ACTION against Defendants, and each of them:

- 10 1. For general damages according to proof;
- 11 2. Special damages, according to proof;
- 12 3. Punitive damages, according to proof, as to the individual Defendants
- 13 only;
- 14 4. Prejudgment interest;
- 15 5. For costs of suit herein;
- 16 6. Reasonable attorney's fees; and
- 17 7. For such other and further relief as the Court may deem just and proper.

18 For the FOURTH CAUSE OF ACTION against Defendants, and each of them:

- 19 1. For general damages according to proof;
- 20 2. Special damages, according to proof;
- 21 3. Punitive damages, according to proof, as to the individual Defendants
- 22 only;
- 23 4. Prejudgment interest;
- 24 5. For costs of suit herein;
- 25 6. Reasonable attorney's fees; and,
- 26 7. For such other and further relief as the Court may deem just proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: March 19, 2008

Respectfully Submitted,

/s/ Dan Bacal
DAN BACAL
Attorney for Plaintiff